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IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

DAY OF GENERAL DISCUSSION: RIGHT TO EDUCATION (ARTICLES 13 AND 14 OF THE COVENANT)

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THE RIGHT TO QUALITY EDUCATION

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1. The human right to education is described in the International Covenant on Economic, Social and Cultural Rights as follows:

"Article 13

"1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

"2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

"(a) Primary education shall be compulsory and available free to all;

"(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

"(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

"(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

"(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

"3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

"4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph I of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

"Article 14

"Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all."

2. These articles elaborate on the right to education described in article 26 of the Universal Declaration of Human Rights, and anticipate similar provisions in the Convention on the Rights of the Child, primarily in articles 28 and 29.

Interpretation

3. These articles place heavy emphasis on the idea that education should be free. Accordingly, there is a tendency to view the right to education as something that obligates Governments to provide education for all, directly. In my view, this is unfortunate. The quality of education can be higher if Governments give more attention to facilitating schooling rather than providing it directly.

4. Many different parties share responsibility for the realization of human rights, but the primary obligation falls on national Governments. However, Government's obligation is to assure that rights are realized, and not always to fulfil the rights directly. Consider, for comparison, the human right to food and nutrition. This right does not mean that Governments are obligated to feed all of us. It means that Government has to make sure that the conditions in which we live are suitable to allow us to provide good quality food for ourselves. That is, the Government is obligated to respect, protect and facilitate realization of our rights, in addition to its obligation to fulfil our rights directly under certain circumstances. 1/

5. Imagine what our meals would be like if we all depended on Government to feed us. We would probably all get some sort of uniform watery gruel, something akin to prison fare. It is just that sort of thing that happens when we depend on Government to educate us.

6. It may be useful to compare this situation with that relating to health care. In many developing countries, health care is provided free. In some countries there is even a constitutional guarantee of free health care. If there is no option for fee-based care, we can be sure that all health care will be of minimal quality. The simple fact is that health care or education or food must be paid for in some way. It can be free to the consumer, but some agency somewhere must bear the cost. Government promises of free health care or free schooling can mean promises of mediocre health care or mediocre schooling.

7. The human right to education, food, or health care means that the Government should guarantee at least that level of service that is required for even the poorest individual to live in dignity. But we must have social systems that allow the quality of service to be better than that minimum. How can that be accomplished in poor countries?

8. The World Conference on Education for All, held in Jomtien, Thailand, in 1990 spelled out the aspirations in The World Declaration on Education for All (known as the Jomtien Declaration), and also produced a Framework for Action to Meet Basic Learning Needs. Viewing the results almost a decade later, we find a pattern that had been established even before Jomtien: "these recommendations largely failed to generate the response needed to meet the growing demand-supply crisis in basic education". 2/

9. The advocates of education are clear about the high social returns on investment in education. The data demonstrate unambiguously that Government expenditures on education, especially primary education, yield substantial benefits for many dimensions of development. However, there is a real difficulty in linking social investment and private investment. If education pays off so handsomely, why don't parents guide their children accordingly? How can social investment be aligned with private investment? Perhaps we can get an answer by looking at education not as an end in itself but as a means for addressing the problem of child labour.

Child labour

10. Child labour can be defined as children working in conditions that are excessively abusive and exploitative. It is not clear where exactly the boundary line between acceptable children's work and unacceptable child labour should be located, but there are many situations in which there can be no doubt that the line has been crossed.

11. Those who offer proposals for dealing with the exploitation of children generally fall into two major camps, the abolitionists who want to end child labour, and the ameliorationists who want to improve the conditions under which children work. Neither camp has been very effective, mainly because their arguments have been politically naive. Both national and international law regarding child labour is frequently ignored, in rich as well as in poor nations. Child labour laws are regularly ignored in practice because they do not take full account of the social, political and economic forces that sustain child labour. Yes, one can say that children shouldn't work, but how then are they and their families to live? Yes, one can say that children should have better lighting and better toilet facilities in their workplaces, but how exactly are these extra costs to be paid, and what will motivate that payment?

12. Where children, parents, employers and Governments all feel they get some benefit from the existing practice and see no attractive alternatives, they will ignore and circumvent efforts to alter the situation. Attempts have been made to provide better alternatives for children in various forms, but they have consistently collapsed under the burden of their costs. Is it possible to break out of this dilemma?

13. Historically, compulsory schooling and the control of child labour in the West has been motivated by two major considerations: (i) organized labour found it advantageous to remove children from the labour pool so adult wage rates would be higher; and (ii) the building of skill levels or "human capital" through education increased earning capacities. Schooling was an investment. In third world countries, too, greater effort should be made to organize labour and to assure that schooling is in fact a productive investment.

Schooling as private investment

14. How can this investment notion be used in third world situations? Presently, schools in many third world countries are not likely to build up useful, money-earning skills. The schools' performance levels are abysmally low, partly because they are funded by Government regardless of how they perform. Parents see little value in having their children attend school. Parents are certain only of the fact that children who attend school forgo the opportunity to do immediately useful work in the fields or on the streets.

15. Many vocational schools have been created, often with support from private charities. Their success record has been mixed, and their scale remains small in relation to the size of the child labour problem. The problem is that usually such schools depend on external subsidies that are not large enough and are not sustained through time.

16. Perhaps such schools have not flourished because they have not been organized in a business-like manner. Vocational schools could be organized as private businesses, businesses that would succeed as economically viable operations if they were effective in developing money-earning skills in their students.

17. The challenge, of course, is to find ways to pay for such schools. At least part of the schools' costs can be covered with the schools' earnings. The schools can be organized as combination work-study operations in which students gain practical experience by providing a variety of products and services for the local market. In the 1930s Gandhi proposed to "begin the child's education by teaching it a useful handicraft, enabling it to produce from the moment it begins its training. Thus, every school can be made self-supporting ...". 3/ Gandhi's scheme was not implemented. A more promising approach is to make investments in the students themselves. Techniques can be adapted from highly successful micro-loan programmes such as the Grameen Bank in Bangladesh.

18. The Grameen Bank had made loans to hundreds of thousands of the poorest women in Bangladesh, with an average loan of under $100. Repayment rates have been very high. Similar micro-loan programmes now exist in many countries, both rich and poor. They have good records of success in their enterprises and good records of loan repayment. They vary in structure, but most have some sort of social support system integrated with the lending programme.

19. Instead of focusing on support for starting new enterprises, a comparable lending programme could be devised to help individuals pay school tuition to learn marketable skills. Putting these ideas together, the recommendation is this: private vocational schools could be created with curricula designed to build skills that would enhance long-term earning capacity in the local setting. Tuition could be paid through loans against future earnings.

20. Having children work for years to pay off a debt may seem uncomfortably similar to the situation some children face as bonded labourers. There are important differences, however. No child should be asked to do this without the consent of both child and parents. There must be very clear and explicit contracts and repayment schedules. The consequences of default on the loan should be plain and limited.

21. Social support mechanisms can play an important role in facilitating repayment of tuition loans. For example, parents, relatives, and perhaps community members could share in the liability so that they are contractually obligated to pay if the child does not. This would strengthen the parents' and relatives' incentives to provide encouragement and support for the child in studying and, upon graduation, in seeking gainful and stable employment. Properly designed, vocational schools of the sort described here could help to strengthen families and communities.

22. Apart from conveying technical skills, the school also would serve as a social support system during and after the student's attendance at the school. Faculty and staff members would be expected to develop long-term deep relationships with the students and their families. Graduates would be expected to return frequently to talk with current students and to help maintain the school with money, with their skills, and with whatever other resources they can muster. The feeling of the school would not be that of a factory churning out standardized products but of a large extended family. No student would have the right or the requirement to attend the school. Instead, acceptance into the school should come to be viewed as a privilege.

23. The school would have to be of first-rate quality in teaching skills that would be of value locally, whether these are skills of carpentry, plumbing, truck-driving, or anything else that may be in demand. Market research would be needed to discover which skills are needed. Particular attention should be given to the kinds of skilled jobs that outsiders take in the local area. The school also could offer training in entrepreneurship so that graduates would be better prepared to find and develop their own opportunities.

Viability depends on performance

24. A school of the sort proposed here would be a self-sufficient institution, surviving on its own success. It would not depend on a permanent external subsidy from Government or private sources. If the school is not effective, the earning power of its students would not increase. They would

find it difficult to repay their tuition loans. If enough students default on their loans, the school's cash flow would suffer, and eventually it would dry up and disappear. This self-testing characteristic is missing from publicly supported school systems. Public schools ordinarily have no strong feedback cycle, no reinforcement schedule to keep their performance level up. Typical public schools are doomed to being funded inadequately, assuring their mediocrity. And they are doomed to being funded perpetually, assuring their perpetual mediocrity.

25. This proposal for business-like vocational schools can be appealing to both the political left and the political right. It is designed to help the poor, but it is based on using the free market directly to liberate the poor from their plight. These schools would not be unending drains on public resources. They would require capital from the outside only for start-up; after that, they could be self-sustaining. Of course, continuing contributions would always be welcome to allow such schools to reach more children.

26. Such schools could be started as small experiments. Small boards of interested individuals could take the responsibility for drawing up concrete plans and budgets suited to local circumstances. Start-up funding might be obtained from local industrialists who have themselves moved from rags to riches and are willing to create that possibility for others. Clarity of vision together with a good measure of optimism could be put together to start small seed programmes with vast possibilities.

27. Such schools and tuition loan programmes might be established on the basis of resources and resourcefulness already available within poor countries. But the possibilities would be greater with backing from governmental and non-governmental international organizations. The World Bank, in particular, should see that schools of this kind would have beneficial effects for national economies while at the same time benefiting children. Such schools would constitute investments in human capital in a very literal sense.

Legal status

28. The articles on the right to education in the International Covenant on Economic, Social and Cultural Rights emphasize free education, especially at the primary level. With regard to secondary and higher education there is a call for progressive introduction of free education. However, in article 13 (3) there is an acknowledgment that parents may wish to choose for children schools other than those established by the public authorities, provided that they "conform to such minimum educational standards as may be laid down or approved by the State ...". Similarly, article 13 (4) says that "No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject ... to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State."

29. Thus, we can conclude with a few proposed principles:

(a) The State is obligated to make primary education compulsory and available free to all;

(b) The State is obligated to progressively introduce free education at the secondary and higher education levels;

(c) The State should respect, protect and facilitate the offering of alternative, tuition-based education either by the State itself or by private parties;

(d) The State should help to create suitable micro-loan programmes that could be used to pay for tuition;

(e) The State may help provide start-up funding for educational programmes managed by private parties;

(f) The State should oversee educational programmes of private parties to ensure that they meet minimum standards.

30. The danger in this approach is that if an array of tuition-based educational options is offered, then free education - which is costly to the State - may be allowed to deteriorate. Measures should be taken to minimize this tendency. However, in many countries public education has already deteriorated to a very low level. Rather than offer only schooling provided directly by the State, it is better to offer a range of educational options. Given the opportunity, many will choose affordable education with quality over free education of little value.

31. Education advocates are always concerned about how resources can be mobilized to provide adequate educational services. Moreover, they observe that:

> "... universalizing school enrolment is not just a question of providing adequate facilities, but it is also likely to involve persuading parents to send their children to school. This is especially true in countries where girls are deliberately kept out of school and where economic considerations prevent children from going to school". 4/

32. The suggestion offered here is that if schooling is viewed by its "consumers" as something of high value to them, *they* will mobilize the resources for it. Where schooling is highly valued, there is no need to persuade parents to send their children. Economic forces should be reconfigured through appropriate social design so that economic considerations do not prevent children from going to school, but instead provide compelling reasons for them to go to school.

Notes

1/ Asbjørn Eide, "Human Rights Requirements to Social and Economic Development", Food Policy, Vol. 21, No. 1 (March 1996), pp. 23-39.

2/ Frank P. Dall, "Children's Right to Education: Reaching the Unreached", in James R. Himes (ed.), Implementing the Convention on the Rights of the Child: Resource Mobilization in Low-Income Countries (The Hague: Martinus Nijhoff, 1995), pp. 143-182, at p. 144.

3/ Quoted in Myron Weiner, The Child and the State in India (Princeton, New Jersey: Princeton University Press, 1991), p. 105.

4/ Dall, op. cit., p. 167.